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Number 49

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

UNITED GAS PIPE LINE COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,
CONTINENTAL OIL COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT CONTINENTAL OIL COMPANY

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FIDELITY PRINTING COMPANY, INC., HOUSTON

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BRIEF OF RESPONDENT CONTINENTAL OIL COMPANY

I.

STATUTES INVOLVED

Sections 1(a), 1(b), 4(c), 4(d), 4(e), 5(a), 7(b), 7(c) and 7(e) of the Natural Gas Act; 52 Stat. 821 *et seq.*, as amended; 15 U.S.C. §§ 717(a), (b), 717c(c), (d), (e), 717d(a), 717f(b), (c), (e). These sections are reproduced in the Appendix hereto (*post* pp. 1a *et seq.*).

II.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether, upon expiration of a contract covering a jurisdictional sale of gas, the pipeline purchaser is

required by the Natural Gas Act to continue purchasing gas, just as the producer-seller is required to continue selling gas, unless and until abandonment is authorized by the Federal Power Commission pursuant to Sec. 7(b) of the Act.

2. Whether a pipeline natural-gas company may abandon its certificated gas purchase facilities, and the service rendered by such facilities, without authorization for such abandonment by the Federal Power Commission pursuant to Sec. 7(b) of the Natural Gas Act.

III.

SUPPLEMENTAL STATEMENT

United Gas Pipe Line Company (United) describes the price provisions of the contract Continental Oil Company (Continental) sought to negotiate with United as ". . . a new series of prices reaching 18.75¢ per Mcf . . ." (United Br. p. 4). Such provisions were more accurately summarized by United's Vice President, as follows: "The increased price was to begin at a level of 14 cents per Mcf plus 1.75 cents per Mcf tax reimbursement for the first five years of the contract, and thereafter the price would increase one cent per Mcf each five years thereafter . . ." (R. 14). It was only after 15 years that the price would reach 18.75 cents per Mcf, inclusive of tax reimbursement. The Johnson Bayou Field will be depleted in about 16 years (R. 66).

While United's Statement relates that United filed a complaint with the Commission protesting Continental's unilateral rate filing and asking that it be rejected (Br. p. 5), United omits any mention of the following facts: United did not complain of the level of Continental's proposed new rate, which was the lowest guideline rate set by the Commission for "old" gas in South Louisiana (18 CFR § 2.56). United sought rehearing of the Commission's order which

accepted Continental's rate filing and made the new rate effective; but upon denial of rehearing, United failed to seek court review (R. 23). Therefore, United is now precluded from complaining about the Commission's acceptance of the rate filing, the level of the rate, or the lawfulness of the rate.

IV.

ARGUMENT

1. As required by the public interest, Sec. 7(b) of the Natural Gas Act vests the Commission with jurisdiction over abandonment of gas purchase facilities, or services rendered by means of such facilities, regardless of whether the abandonment is attempted by a producer or a pipeline.

The public interest in an adequate supply of gas at reasonable rates gave rise to the passage of the Natural Gas Act.[1] Continuing supply and reasonable rates are the two objectives of the Act. This transcending interest and purpose dictated the conclusion reached by the Commission and the Court below.

Gas consumers are protected, so far as continuing supply is concerned, by Sec. 7(b) of the Act, which prohibits abandonment, without FPC permission and approval, of any jurisdictional "purchase facilities"[2] of a "natural-gas company" (whether a producer or a pipeline), or any service rendered by means of such facilities. The consumer's protection against excessive rates is provided by Secs. 4(c), (d) and (e), 5(a), and 7(c) and (e).

---

[1] Sec. 1(a); 52 Stat. 825 (Section 7(c) as originally enacted); *United Gas Pipe Line Co.*, 3 FPC 3, 8, 9.

[2] Field facilities are called "purchase facilities" in the Commission's Rules (18 CFR § 2.58) and Regulations (18 CFR § 157.7).

Under United's contention, the Commission would have jurisdiction to protect the public interest only with respect to the reasonableness of rates, leaving the consumer without supply protection if the pipeline does not deign to provide such protection. But if the consumer cannot get the gas he needs, it makes no difference whether it was the producer or the pipeline who cut off his supply.

Pipelines certificate their facilities on the basis of the gas supply dedicated to them. In turn, distribution companies build their facilities in reliance upon receipt of those supplies. Ultimately, the individual consumer installs gas-consuming appliances upon the same reliance. The initial certificate would not have been issued, the distribution facilities would not have been built, and the consumer would not have bought the appliances in the absence of firm supply commitments. Accordingly, the consequences of permitting abandonment when gas sales contracts expire must be controlled by the Commission, not the pipelines.

Under United's construction of the Act, substantial dedicated reserves of gas still in the ground upon expiration of thousands of gas purchase contracts would remain committed to interstate commerce, and to consumers who acted in reliance upon those reserves, purely at the election, or even the whim, of the pipeline purchaser. Clearly, this is not and should not be the law.[3]

2. The equities as between the producer and the pipeline.

Virtually all gas sales contracts provide for their eventual termination. Some expire automatically; others may be terminated by either party. But however a contract may come to an end prior to depletion of the dedicated reserves, entirely different consequences follow (1) where only the

[3] *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 143.

seller is obligated to continue to sell, and (2) where the seller must continue to sell and the buyer must continue to buy.

Under alternative (1) the seller's immediate and drastic prospects are loss of revenue, loss of reserves through drainage, and loss of the gas lease itself. United fails to recognize that practically all oil and gas leases provide that once production is commenced it must continue without cessation of more than 60 or 90 days, unless drilling operations are being conducted on the lease. See, for example, the Johnson Bayou lease provision at R. 171. The penalty for failure to comply with this lease provision is, as in the example, forfeiture of the lease. Under these circumstances, the seller would have no bargaining position whatever upon contract termination, and would then be at the absolute mercy of the buyer. This is precisely the happy position United thought it occupied when it insisted that Continental continue to sell its gas to United for 10.79 cents per Mcf, including tax reimbursement, until final depletion of the reservoir. United was perfectly willing to buy this gas at half of its going market price,[4] but did not "need" or want the gas at any higher price, no matter how just and reasonable that price might be.

Sooner or later United will have to replace the Johnson Bayou gas; and United openly admitted that such gas could not be replaced for 10.79 cents per Mcf (R. 58). Indeed, it is obvious that United could not replace such gas even at the bargain price at which Continental was willing to sell — 14 cents plus 1.75 cents tax reimbursement. Also obvious is the fact that United was attempting to exploit its inequitable position in its own economic interest and in complete disregard of the public interest.

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[4] The Commission's "in-line" or "guide line" rate at the time for South Louisiana was 21.25 cents per Mcf (18 CFR § 2.56, as amended.)

Under United's construction, when a gas purchase contract expires, the pipeline-buyer is relieved of all obligations and hence requires no remedy. But what, then, are the remedies of the producer-seller? He has only two choices: (a) he can, of course, yield to the dictates of the buyer and sell on the buyer's terms, or (b) he can seek permission to abandon further sales to the buyer. In the latter event, the seller has no assurance that abandonment will be authorized, but he faces the certain consequences of loss of revenue, drainage, and probable loss of his lease while prosecuting his application to abandon. Moreover, abandonment is often no cure for the seller's plight because, as was the case here, there is then available no other purchaser for the seller's gas. Under alternative (1), therefore, the seller is deprived of all equities.

Under alternative (2) the equities are balanced. The parties then negotiate on even terms without fear of loss of property or markets. If negotiations fail, either or both parties can seek abandonment. It is true that the seller is meanwhile free to file a unilateral rate, but the buyer is well protected as to rate and is not deprived of his property without due process of law. The buyer receives gas, his stock in trade, at a just and reasonable rate. This rate is not one that the seller has "power to fix" (United Br. p. 18); it can only be one which is authorized by the Commission. The buyer can protest the rate if it is not satisfactory and can take steps to force a rate hearing under Section 4(e). The Commission thereupon scrutinizes the rate once again. If deemed to be too high, the rate filing may be rejected, or its taking effect may be suspended, with any collections subject to refund at interest pending a hearing in which the seller has the burden of proving the rate to be just and reasonable. The 7% interest currently prescribed by the Commission for exces-

sive rate collections is a powerful deterrent to irresponsible unilateral rate filings. Under alternative (2), therefore, both parties have appropriate remedies and the consumer is at all times protected as to continuity and adequacy of supply as well as to propriety of rates.

The issues United attempts to raise respecting its supply, take or pay obligations, and cost control position might have some relevance if United had here availed itself of the remedy which is open to it at all times, to-wit: a proceeding upon an application to abandon. But those issues cannot be resolved in the present posture of this case.

3. The applicable case law requires affirmance of the judgment below.

Three fundamental fallacies lead to United's misconstruction of the case law. To begin with, United erroneously asserts that all gas sales must be pursuant to contract. Secondly, United ignores the distinction between an *initial* purchase and the *continuation of an existing* purchase. And, thirdly, United argues illogically that because the word "purchase" appears in neither Section 1(b) nor Section 7(b), the Commission has no jurisdiction over gas purchases or purchasers. These fallacies become readily apparent in the light of legal precedent and common sense.

The *Sunray* case[5] annihilates United's arguments. Indeed, the *Sunray* opinion could, with very slight modification, serve as the opinion in the case at bar. Both cases involve the identical question: May jurisdictional gas service be abandoned without FPC approval? It makes no difference whether this question be considered (as in our case) from the pipeline-purchaser's standpoint, or (as in *Sunray*) from

[5] *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137. See, also, the companion case of *Sun Oil Co.* v. *FPC*, 364 U.S. 170.

the viewpoint of the producer-seller. A "purchase" is inseparably a part of every "sale"; "purchase" and "sale" are but opposite sides of a single coin. Regardless of the side approached, the answer to the question must be the same.

Both United and Continental are "natural-gas companies" within the meaning of the Act, and, as such, both perform a service to the public. The Commission clearly has jurisdiction over both parties and over whatever public service each is rendering. United says, in effect, that as to the pipeline-purchaser this jurisdiction continues only so long as the gas purchase contract continues, because all gas purchases must be by contract. This same argument was expressly rejected in *Sunray:*

> "Under petitioner's theory, the abandonment provisions of Sec. 7(b) would have application only if it was desired to abandon service while the contract was still in effect.
>
> "The argument seems to us unpersuasive even on the face of the statutory language." (364 U.S. at p. 148)
>
> * * *
>
> "Further, the Power Commission has from an early date taken the view that there is a continuing obligation to perform 'service' imposed by the Act which outlasts the term of a seller's original contract of sale. As early as 1942 it held that an abandonment of service after the expiry of such a contract had to have Commission approval under Section 7(b). United Gas Pipeline Co., 3 F.P.C. 3, 9." (at pp. 153-154)
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> * * *
>
> "The obligation that petitioner will be under after the contract term will not be one imposed by contract *but by the Act.*" (at p. 155; italics supplied)
>
> * * *
>
> "The short of the matter is that Mobile [350 U.S. 332] recognized that there were two sources of price and

> supply stability inherent in the regulatory system established by the Natural Gas Act — the provisions of private contracts and the public regulatory power. * * * Petitioner now urges an application of that decision that could make private contracts the only stabilizing factor under the Act." (at pp. 155-156)

United fails to recognize the distinction between an *initial* purchase and the *continuation of an existing* purchase. No one here contends that the Act confers power on the Commission to order a pipeline to make a particular initial purchase. But when "service" commences by means of a "purchase," the power of the Commission attaches to that "service" and is not relinquished unless and until the Commission authorizes discontinuance. It matters not that the word "purchase" nowhere appears in either Sec. 1(b) or in Sec. 7(b), nor that no certificate is requisite to initiate a "purchase." Such a certificate would be superfluous in view of the certificate requirements respecting the "sale" half of the transaction, and the further certificate requirements for the installation and operation of purchase facilities and for the conduct of transportation by which the purchase and sale transaction is effectuated. United cannot deny that in entering this long-term purchase arrangement with Continental, in installing the facilities necessary to accept delivery of the gas so purchased, and in operating those facilities and transporting the gas to customers, United was not performing a "service." *Sunray* is likewise dispositive on this point:

> ". . . petitioner's contention depends on the assumption that the provisions relied upon speak only in terms of the specific 'sale' contemplated by the parties and not in terms of a 'service' in the movement of gas in interstate commerce, of which 'service' the initial 'sale' is the commencement. For under Section 7(e) the Commission is authorized to issue a certificate authorizing

the 'service' covered by the application, as well as a 'sale'; and since Section 7(c) [footnote 15 omitted], which details the acts for which a certificate is a prerequisite, sets forth no specific antecedent for the 'service' to which Section 7(e) refers, it might well be thought that one who 'engage[s] in the transportation or sale of natural gas,' which Section 7(c) does refer to, is performing a 'service' within the meaning of Section 7(e). Certainly there is no more likely antecedent in Section 7(c). The structure of Section 4(c) presents the same feature,[16] and that of the abandonment provisions of Section 7(b) themselves[17] looks the same way.

"Furthermore, within Section 7(e) itself, there is found the further requirement to which petitioner itself points — that with respect to an application for a certificate of any nature, a two-part finding must be made: that the applicant is willing and able 'to do the acts and to perform the service proposed.' Thus, it is evident that all the matters for which a certificate is required — the construction of facilities [United received a certificate for construction of the purchase facilities here involved] or their extension, as well as the making of jurisdictional sales — must be justified in terms of a 'service' to which they relate. Accordingly, Section 7(e) itself gives positive indication that the 'service' which the Commission's certificate may au-

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"[16] Not only does Section 4(c), • • • contain a reference to 'services' in a context where the antecedent must be 'transportation or sale,' but it recognizes that a 'contract' may 'affect or relate to' such services."

"[17] It will be noted that Section 7(b) does not refer to the abandonment of the continuation of sales, but rather to the abandonment of 'services.' • • • Accordingly, if petitioner was correct in saying that its contract did not involve a 'service', it would be difficult to see the applicability of the abandonment provision even during the term of the contract, when petitioner concedes it is applicable."

thorize is something quite apart from simply the specific sales which Section 7(c) forbids without a certificate sufficient to authorize them. To be sure, Section 7(e) requires that the applicant be found willing to perform the 'service' in question; but surely such willingness can be inferred from its willingness to enter into a long-term sales contract." (364 U.S. at pp. 149-151)

* * *

"It [the Commission] has long drawn a distinction between the underlying service to the public a natural gas company performs and the specific manifestation — the contractual relationship — which that service takes at a given moment. * * * This position of the Power Commission is evidence that the service in which the producer engages is distinct from the contract which regulates his relationship with the transmission company in performing the service." (at pp. 152-153)

The Court in *Sunray* dealt fully with the adverse consequences to the public if a producer were permitted to control the duration of his sale or service. The identical consequences would follow if the buyer were permitted to control the duration of his purchase or service. In fact, if United's contention should be upheld, the very purpose of section 7(b) would be defeated, and the entire fabric of the *Sunray* case would be destroyed.

United seeks to undermine the Act and the *Sunray* doctrine on the tenuous basis of four unnecessary, but explainable, words, and one sentence of dictum found in the *Sunray* opinion. As to the four words, this Court said that petitioner "will be under an obligation to continue to deliver gas to United *on the latter's request* unless it can justify an abandonment" (364 U.S. at p. 155 italics supplied). But how else can gas be "delivered" than "on the latter's [pipeline's] request"? That is precisely how all gas is "delivered" to all pipelines. There is only so much room in a given pipe-

line, and there must be room for the gas "delivered" into that line. Also, the volume of gas a pipeline may need at any given time depends upon the then available market. From wellhead to burner tip, it is always the buyer who elects the timing and quantity of gas to be "delivered."

Moreover, in *Sunray* this Court was considering post-contract obligations in the context of the facts there presented, namely, that the seller did not want to sell, but the buyer *did* want to buy. The reverse side of the coin appears in the case at bar. We conclude that by using the four words "at the latter's request," this Court neither made the obligation of the producer to *sell* nor the obligation of the buyer to *purchase* dependent upon the pipeline's *request;* such *request* referred simply to the amount of gas to be *delivered* from time to time.

The single sentence of dictum relied on by United is this: "It is said that the petitioner will be in a position of inequality, because it must supply gas then to United without a corresponding obligation on United to take it." (364 U.S. at p. 155). The Court then went on to muse over the bargaining strength of each party. We have already dealt fully with this aspect of our case in Section 2, *ante,* pp. 4-7. Obviously, this Court did not intend by one sentence of dictum to detract from the entire substance of the holding in *Sunray.* United's contention to the contrary illustrates the illogical result that can be reached by lifting a few words from their context.

That the prohibition against unauthorized abandonment is intended to apply to pipelines as well as to producers is made evident in *Sunray:*

> "When attached to the leverage of a power to abandon service, at a contract's termination, without con-

> temporaneous Commission approval, this power to exercise contractual control not only over rates but over the mode of their regulation, would be a substantial one indeed. And, like the power to force an advance license for the abandonment of the continued supply of gas, *the power would be one enjoyed by pipeline companies and producers alike.*" (364 U.S. at p. 147; italics supplied)
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> • • •
>
> "Moreover, once so dedicated there can be no withdrawal *of that supply* from continued interstate movement without Commission approval." (at p. 156; italics supplied)

Just as this Court held in *Sunray* that *Mobile*[6] was beside the point (364 U.S. at pp. 155-156), so it is beside the point here. *Mobile* dealt with the binding effect of a gas sales contract during its term, not with a situation, as here, where the provisions of the Act have superseded the terminated contract.

The *Memphis* case[7] merely supports Continental's right to file unilaterally a changed rate when not precluded by contract. Here, one party is a producer, the other a pipeline, and both are "natural-gas companies" under the Act. In *Memphis,* one party was a pipeline "natural-gas company"; the other a distributor which was not a "natural-gas company" over which the Commission had jurisdiction.

Panhandle[8] is no more help to United than *Mobile* and *Memphis.* In *Panhandle* the jurisdiction of the Commission never attached, as was more fully explained in the

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[6] *United Gas Pipe Line Co.* v. *Mobile Gas Corp.,* 350 U. S. 332.

[7] *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division,* 358 U.S. 103.

[8] *F.P.C.* v. *Panhandle Eastern Pipe Line Co.,* 337 U.S. 498.

Rayne case.[9] Since the leases were not developed in *Panhandle,* there was no sale of gas to which a "service" could attach; and in any event the lease sale was not to an interstate pipeline company, nor made in interstate commerce. The Commission in *Panhandle* contended for implied jurisdiction which, under the facts of that case, could not exist. Here, the jurisdiction is explicit as to both "natural-gas company" parties, as to the "service" rendered by United in purchasing and transporting gas, and as to the construction and continuing use by United of the facilities certificated for those very purposes.

CONCLUSION

For the foregoing reasons the judgment of the Court below should be affirmed.

Respectfully submitted,

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[9] *United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392, 403-404.

CERTIFICATE OF SERVICE

I, Bruce R. Merrill, who has entered my appearance in this cause, hereby certify that I have in accordance with Rule 33 of the Court, this date served by mail three copies of the foregoing brief on counsel for petitioner United Gas Pipe Line Company, Solicitor for the Federal Power Commission, Howard E. Wahrenbrock, and the Solicitor General of the United States.

Dated at Houston, Texas, this 6th day of September, 1966.

BRUCE R. MERRILL

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APPENDIX

* * * * *

NATURAL GAS ACT

SECTION 1.(a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest. [52 Stat. 821 (1938); 15 U.S.C. § 717(a)]

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U.S.C. § 717(b)]

* * *

SEC. 4(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts

which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearing, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference

thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 76 Stat. 72 (1962); 15 U.S.C. § 717c]

* * * * *

SEC. 5(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any state, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be there-

after observed and in force, and shall fix the same by order; *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * *

SEC. 7(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U.S.C. § 717f(b)]

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made

and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942); 15 U.S.C. § 717f(c)]*

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* As originally enacted June 21, 1938 by Public Law No. 688, 75th Congress, Chapter 556, 3d Session [H. R. 6586], 52 Stat. 825, Section 7(c) read as follows:

"(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation

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(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U.S.C. § 717f(e)]

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of any such facilities or extensions thereof: *Provided, however,* That a natural-gas company already serving a market may enarge or extend its facilities for the purpose of suppying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission. In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, *it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." (52 Stat. 825 (1938))* (italics supplied)